

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE LUIS CINTRÓN-MORENO,

Defendant.

Criminal No. 96-337 (JAF)
(Reassigned from HL)

OPINION AND ORDER

Following Defendant's appeal of our order dated December 7, 2007 (Docket No. 1951), the First Circuit now remands with instructions that we reconsider two discrete issues. First, we are to reconsider our determination that Defendant received adequate notice of the forfeiture of his truck, yet failed to object via the proper administrative procedures. Second, we are to reconsider our holding that Defendant failed to make a timely request for return of property transferred to the U.S. Marshals Service. See United States v. Cintrón-Moreno, No. 08-1087, slip op. at 2-3 (1st Cir. Aug. 10, 2009). We ordered both parties to suggest the course of action we should follow in complying with the Court of Appeals' mandate. (Docket No. 1982.) Having considered both parties' submissions, we enter the following disposition.

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1 **A. Forfeiture of Defendant's Truck**

2 Defendant's truck was seized following his arrest in 1997 and
3 subjected to forfeiture by the U.S. Customs Service. (Docket
4 No. 1784.) Following his conviction, Defendant filed a motion under
5 Rule 41(e) - now re-codified at Rule 41(g) - for the return of
6 property. (Docket No. 1483.) Prior to Defendant's appeal, the
7 government had conceded in a motion before this court that Defendant
8 was not properly notified of the forfeiture of his truck. (Docket
9 No. 1784.) At that time, the government consented to an entry of
10 judgment against it in the amount of \$9,034, the truck's pre-sale
11 appraisal value. (Id.) During the December 2007 evidentiary hearing,
12 however, counsel for the United States was unaware of the
13 government's prior concession and failed to inform this court of said
14 consent to judgment. (Docket No. 1962.) In its brief before the Court
15 of Appeals, the government corrected this error, reasserted that its
16 notice to Defendant of the truck's forfeiture was deficient, and
17 expressly requested a remand to this court so that judgment could be
18 entered against it. Brief for the Appellant at 36-39, United States
19 v. Cintrón-Moreno, No. 08-1087 (1st Cir. Aug. 10, 2009). In its
20 latest submission to this court, the government has again consented
21 to such a judgment against it. (Docket No. 1988.) Accordingly, we
22 find that Defendant did not receive adequate notice of the forfeiture
23 of his vehicle, and we order judgment against the United States in
24 the amount of \$9,034.

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1 The principle of sovereign immunity dictates that Congress must
2 expressly consent to any award of interest against the government.
3 Library of Cong. v. Shaw, 478 U.S. 310, 314 (1986). A general waiver
4 of immunity to suit is not sufficient to overcome this hurdle. Id.
5 The text of 28 U.S.C. § 2465 provides for prejudgment interest on the
6 proceeds from the sale of forfeited property. 28 U.S.C.
7 § 2465(b)(1)(C)(ii). This provision of prejudgment interest, however,
8 is applicable only to "any forfeiture proceeding commenced on or
9 after the date that is 120 days after April 25, 2000." Id. at note
10 (Effective Date of 2000 Amendment). Recognizing that § 2465 did not
11 provide for the award of interest prior to its amendment in 2000, the
12 First Circuit has held that Congress did not intend for the amended
13 waiver of sovereign immunity in § 2465 to be retroactive. Larson v.
14 United States, 274 F.3d 643, 647 (1st Cir. 2001).

15 The administrative forfeiture proceeding against Defendant began
16 in September 1997, when the U.S. Customs Service sent notice of a
17 pending forfeiture action to the Defendant's prior addresses.¹ The
18 government completed the forfeiture and sold Defendant's vehicle in
19 June 1998. Therefore, 28 U.S.C. § 2465 is inapplicable, and there is
20 no other waiver of sovereign immunity that allows us to award
21 prejudgment interest to Defendant.

¹ The government failed to send notice to the Metropolitan Detention Center in Guaynabo, Puerto Rico, where Defendant was being held awaiting trial. This failure led the government to concede to judgment against it. (Docket No. 1784.)

1 **B. Forfeiture of Property Delivered to U.S. Marshals Service**

2 In our prior order from which Defendant appealed, we determined
3 that all of Defendant's personal property had been accounted for and
4 was either returned to Defendant and his agents or properly delivered
5 to the U.S. Marshals Service for forfeiture. (Docket No. 1951 at 3-
6 4.) The Court of Appeals affirmed our determination that none of the
7 property seized from Defendant remained unaccounted. Cintrón-Moreno,
8 No. 08-1087 at 2. The only question before us on remand is whether
9 the property transferred to the Marshals Service was improperly
10 disposed of or lost. Id.

11 During the evidentiary hearing held before this court on
12 December 7, 2007, the government submitted into evidence DEA Form
13 48a, "Disposition of Non-Drug Evidence." (Docket No. 1952.) This
14 form, dated May 8, 1997, catalogs six exhibits, all of which were
15 transferred to the U.S. Marshals Service for forfeiture proceedings.
16 (Id.) The "File Title" field of Form 48a lists the name "Maria Rosa-
17 Torres." (Id.) Ms. Torres is the Defendant's wife and a convicted
18 co-conspirator in the crime that triggered the forfeiture. Apart from
19 Ms. Torres' name under the "File Title," this form did not attribute
20 the ownership of the listed items to anyone. (Id.) DEA Taskforce
21 Agent Ángel Sánchez testified during the evidentiary hearing that
22 property seized from all co-conspirators that were subjects of the
23 overarching DEA investigation would appear on Form 48a. (Docket
24 No. 1962 at 24) ("Q: Now, if there was any cash that was seized from

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1 the defendant or any of the defendants in the case, in 96-337, would
2 that money have been reflected on here [Form 48a]? A: Yes").

3 In response to our order, the government has submitted recently-
4 discovered DEA documents cataloging the disposition of each of the
5 items listed on Form 48a. (Docket No. 1988-4.) Each "Status Inquiry
6 Document" describes the asset seized, its value, the date of its
7 seizure, its disposition, and, most importantly for our purposes,
8 from whom it was seized. Id. After reviewing these documents, it
9 appears that none of the items listed on Form 48a for forfeiture to
10 the U.S. Marshals Service were seized from Defendant. Rather, the
11 government's submission suggests these items were seized from
12 Defendant's various co-conspirators.²

13 None of these items were listed on the DEA's "Report of
14 Investigation," which, according to Agent Sánchez, listed property
15 seized during the search of Defendant's home. (Docket Nos. 1952;
16 1962.) Finally, Defendant has not yet presented any evidence of his
17 ownership of the forfeited items on Form 48a. Despite the serious
18 doubt that has been cast on Defendant's standing to pursue a claim
19 for return of the properties on Form 48a, the government did not
20 expressly move for dismissal.

² Of the six exhibits, only exhibit N-154, consisting of two Banco Popular checks totaling \$1,900, was seized from Defendant's wife. (Docket No. 1988-4 at 8.) She received timely notice of the forfeiture, but apparently failed to respond with a petition within the statutorily mandated twenty-day deadline. (Id.); See 19 U.S.C. § 1608.

1 **C. Sua Sponte 12(b)(1) Dismissal**

2 Pursuant to Federal Rule of Civil Procedure 12(b)(1), a federal
3 district court has an independent obligation to review its subject-
4 matter jurisdiction over all cases "even in the absence of a
5 challenge from any party." Arbaugh v. Y & H Corp., 546 U.S. 500, 514
6 (2006); see Fed. R. Civ. P. 12(h)(3). Rule 12(b)(1) is a "large
7 umbrella, overspreading a variety of different types of challenges to
8 subject-matter jurisdiction," including mootness. Valentín v. Hosp.
9 Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001).

10 When challenging the court's subject-matter jurisdiction, a
11 movant may raise a factual challenge by controverting the plaintiff's
12 jurisdictional allegations when they are distinct from the case's
13 merits. Id. at 363. The court then addresses "the jurisdictional
14 claim by resolving the [predicate] factual disputes." Id. The party
15 asserting jurisdiction bears the burden of showing its existence. See
16 Skwira v. United States, 344 F.3d 64, 71 (1st Cir. 2003).

17 We may order dismissal sua sponte if it is evident that we lack
18 power to decide a case. See Arbaugh, 546 U.S. at 514. Prior notice
19 to the plaintiff is ordinarily required to permit the plaintiff to
20 correct her error, but no notice is necessary "[i]f it is crystal
21 clear that the plaintiff cannot prevail and that amending the
22 complaint would be futile." González-González v. United States, 257
23 F.3d 31, 37 (1st Cir. 2001).

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In light of the DEA "Status Inquiry" documents submitted by the government (Docket No. 1988-4), we raise the question of our jurisdiction sua sponte and hereby order Defendant to show cause as to why we should not dismiss this case for mootness and lack of standing.

For the reasons stated herein, we hereby **ORDER** the United States to pay Defendant \$9,034, the pre-sale appraisal value of Defendant's improperly forfeited truck. We hereby **ORDER** Defendant to **SHOW CAUSE, on or before November 2, 2009**, as to why he has standing to challenge the forfeiture of those items listed on DEA Form 48a.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 14th day of October, 2009.

s/José Antonio Fusté
JOSE ANTONIO FUSTE
Chief U.S. District Judge